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1 N O T I C E

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18 witness or quoted in any pleading or for any other  
19 purpose and may not be filed with any court.

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1 measures for vulnerabilities that are discovered.

2 Q If a single vulnerability is  
3 discovered, is the claim practiced if only one  
4 corrective measure is identified?

5 A No.

6 Q Okay. And do you understand that the  
7 command that is being discussed in claim 11 is a  
8 command for each vulnerability or is it a  
9 collective command for the entire security system?

10 A It's the command for the entire system.

11 Q Okay. Well, does ESM provide a single  
12 command to correct all of the ownership and  
13 permissions?

14 A I don't recall if ESM has a button that  
15 let's you correct them all at once, but I think it  
16 would have been obvious to one of ordinary ck part  
17 of art to have such a button but didn't have it.

18 Q But if it doesn't have it, it wouldn't  
19 practice that element on an anticipation basis?

20 A I apologize for taking this much time  
21 and I'm looking to see if I answered that and had  
22 not looked at the question before about systemwide  
23 versus whether it's for each vulnerability and I'm  
24 looking for a specification for some support for  
25 that.

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1 Q Identify.

2 A -- give you the delta between all of  
3 the HostGUARD obviousness combinations and the  
4 ESM ones?

5 Q Well, I'm starting with -- I'm starting  
6 with ESM is the predicate. Predicate prior art.  
7 I want to know all functionality that is disclosed  
8 by HostGUARD that is not disclosed by ESM that  
9 supports your obviousness opinion and you  
10 understand that would need to be set forth in your  
11 report, correct?

12 A Right.

13 Q Okay. And your report has a section on  
14 the obviousness section, does it not?

15 A I have various sections.

16 Q We're talking about ESM and obviousness  
17 related to ESM. What functionality do you contend  
18 is disclosed by HostGUARD that is not disclosed by  
19 ESM using ESM as the predicate prior art?

20 A Well, one of them is a list of known  
21 vulnerabilities.

22 Q Okay. Anything else?

23 A Did you give me the ESM exhibit? This  
24 is the HostGUARD one.

25 (Exhibit No. 333 was marked for

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1 identification.)

2 Q Marked as Exhibit 335 even though it's  
3 a horrible 3. We have an understanding that when  
4 I refer to ESM, I'm talking about the Axion  
5 technology, Omniguard Enterprise Management  
6 Security Manager, right?

7 A Yes.

8 Q Okay. You see in Exhibit 335, the only  
9 statement you have about how to combine ESM with  
10 other prior art is the second-to-the-last  
11 paragraph on there where you say to the extent the  
12 court determines that ESM or the user manuals  
13 failed to disclose any limitations of the asserted  
14 claims. Such claims would have been obvious to a  
15 person of ordinary skill. Do you see that?

16 A I see that.

17 Q Other than that, you don't provide any  
18 other explanation of how to combine or what  
19 functionality from HostGUARD would be combined  
20 with ESM, do you?

21 A I do in my main report body.

22 Q Yes. And then the only thing you cited  
23 there was the list of known vulnerabilities,  
24 correct?

25 A So far.

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1 My question is functionality that in  
2 your obviousness section, functionality that is  
3 not in ESM that you contend would be added by  
4 HostGUARD. Isn't it the case you identified  
5 nothing other than the, a list of known  
6 vulnerabilities?

7 A I want to go back. I know you didn't  
8 like my answer but maybe I didn't make it clear  
9 enough. The section X.A includes things that were  
10 known in the art that are included in both  
11 HostGUARD and ESM, in my opinion. But to the  
12 extent that TVIIM is going to contend that ESM  
13 didn't have it and HostGUARD did, then that would  
14 have been obvious combined, and that's what the  
15 text is indicating that's here in paragraph 197  
16 and 198 where I refer to section X.A.

17 Q So the only features that you contend  
18 HostGUARD would add to the functionality of the  
19 ESM are those disclosed in the, your obviousness  
20 paragraph in your invalidity report and those  
21 specifically disclosed in X.A of your report?

22 A Yes.

23 Q Other than that, you don't contend  
24 there are any other features in HostGUARD that are  
25 not in ESM?

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1 A That's right.

2 Q Same question with respect to S3. What  
3 features would you add from S3 to ESM? What  
4 features are in S3? What functionality is in S3  
5 that is not in ESM? That's identified in your  
6 report. And, again, I'm not looking what would be  
7 known to people in the art. I'm simply looking at  
8 the functionality of S3 that you would add to ESM  
9 for your obviousness misconduct. ck

10 A Same list of known vulnerabilities and  
11 to the extent that TVIIM contends that any of the  
12 known features from section X.A are not there.  
13 You would add those as well.

14 Q Again, my question is not about  
15 everything listed in .XM. I'm asking specifically  
16 about D1. Is your contention that S3 sets forth a  
17 list of known vulnerabilities? Does your report  
18 indicate that S3 has a list of known  
19 vulnerabilities in the section of what would be  
20 added to ESM?

21 A It does.

22 Q Okay. And you believe that S3 has a  
23 list of known vulnerabilities? You understand  
24 that ESM is, executes various scripts as checks?

25 A Right.

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1 Q Would you contend that a list of  
2 scripts is a list of known vulnerabilities?

3 A Depends on what was in the scripts.

4 Q Well, script, you would agree scripts  
5 are instructions for a computer to do a particular  
6 act, correct?

7 A Right.

8 Q And so is a script, a collection of  
9 scripts a list of known vulnerabilities?

10 A Could be.

11 Q Okay. And you understand that S3  
12 includes a baseline check-in program where it  
13 takes a baseline of a user's computer and then  
14 will use that baseline as a means of comparison  
15 for future policy scans of the computer?

16 A Yes.

17 Q Would you consider the list of existing  
18 configurations at the time of when the  
19 configuration was created to be a list of known  
20 vulnerabilities?

21 A No.

22 Q Okay. Other than the list of known  
23 vulnerabilities, what functionality of ESM would  
24 -- what functionality of S3 is not found in ESM?

25 A Any, anything of the, listed in section

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1 X.A that TVIIM contends ESM has not disclosed.

2 Q And so that would only be related to  
3 those specific things you identify for, that are  
4 in S3? Well, are you contending that everything  
5 listed in X.A that is identified with S3 is not  
6 found in ESM?

7 A I said to the extent that TVIIM  
8 contends that. I say that it is.

9 Q You understand that you have the burden  
10 of proof or that McAfee has the burden of proof in  
11 proving obviousness by clear and convincing  
12 evidence?

13 A Yes.

14 Q Okay. And in your section on the  
15 elements not contained, the elements you would use  
16 for your obvious determination with respect to  
17 ESM, you identify the list of known  
18 vulnerabilities that you believe is in S3,  
19 correct?

20 A Right.

21 Q And you then make generic reference for  
22 anything that's contained in X.A. Are you  
23 contending is everything listed in X.A is in S3?

24 A I'm contending that everything in X.A,  
25 it would have been obvious to combine all of those



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1 with ESM.

2 Q Because you're saying what's contained  
3 in in X.A is what would be known by a person in  
4 the art at the time, correct?

5 A Right.

6 Q And that is something different than  
7 what is disclosed in S3, correct?

8 A Right.

9 Q Okay. So we have for all of your  
10 opinions, you have the elements that are known by  
11 people in the art, okay?

12 A Okay.

13 Q I'm putting those aside. Now I'm  
14 simply asking you about the functionality from  
15 these unique programs to ESM. Let's go to the  
16 third program.

17 What do you contend that Casella  
18 article discloses that is not contained in the  
19 functionality of ESM and would not otherwise be  
20 known to someone in the art? And again, we'd be  
21 looking at your section on your obviousness  
22 combination for ESM, correct?

23 A Right, or for Casella.

24 Q Or Casella it would be the other way  
25 around because you would be using Casella as the

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1 A Well, there actually is a disclosure of  
2 a GUI in Casella.

3 Q I agree but other than identifying  
4 absence on maybe the inadequate disclosure of a  
5 GUI in Casella, you don't identify any other  
6 feature that you would combine from ESM S3 or  
7 HostGUARD to Casella, do yo?

8 A I disagree with your characterization  
9 of it as inadequate. I just merely said that if  
10 TVIIM considers that Casella isn't disclosing it,  
11 then the reference itself does disclose it.

12 Q Okay. Other than what would otherwise  
13 have been known to somebody -- and yet, you go  
14 that ESM has GUI, right?

15 A Yes.

16 Q So there would be not -- so with  
17 respect to your opinion regarding ESM as the base,  
18 you're not identifying any feature disclosed in  
19 Casella that is not otherwise disclosed to ESM,  
20 correct?

21 A That's right.

22 Q Okay. Now, let's go to S3. What do  
23 you contend is disclosed in ESM that is not  
24 disclosed in S3?

25 A S3 is the base now?

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1 Q S3 is the base. Your section doesn't  
2 identify anything disclosed in ESM that is not  
3 otherwise disclosed in S3, does it? Page 101 of  
4 your report.

5 A What was the that you're talking about?  
6 S3 and what?

7 Q S3 and ESM first.

8 A That's right.

9 Q And your obviousness discussion with  
10 respect to S3 and HostGUARD, you don't contend  
11 that there are any features disclosed in HostGUARD  
12 that are not disclosed in ESM, correct? Not  
13 disclosed in S3?

14 A Right.

15 Q And you don't contend that there are  
16 any features disclosed in Casella that are not  
17 disclosed in S3, correct?

18 A Just that to the extent that TVIIM  
19 claims the description of a GUI is inadequate,  
20 then S3 has a GUI.

21 Q That's going backwards because S3  
22 already has a GUI. We're going to get to Casella  
23 next.

24 A Oh, I'm still on S3?

25 Q Yeah, we're on S3. Does -- is there

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1 disclosed in Casella that is not disclosed in S3  
2 that you would add for your obviousness opinion?

3 A No.

4 Q Okay. Now, let's go to HostGUARD.  
5 What is disclosed -- even HostGUARD is the base.  
6 What is disclosed in ESM when functionality is  
7 disclosed in that is not otherwise disclosed in  
8 HostGUARD? And again, we're looking at page 88.  
9 You don't identify anything being disclosed in ESM  
10 that is not disclosed in HostGUARD?

11 A Correct.

12 Q And you don't disclose anything  
13 disclosed in S3, any functionality disclosed in Se  
14 that is not disclosed in HostGUARD, correct?

15 A Correct.

16 Q And you don't disclose anything that --  
17 you don't find any functionality in Casella that  
18 is not otherwise disclosed in HostGUARD, correct?

19 A Correct.

20 Q And now let's go to Casella. With  
21 respect to Casella, the only feature you find you  
22 may not be adequately disclosed in Casella that is  
23 disclosed in ESM is the GUI, correct?

24 A No. I don't say that it may not be  
25 adequately described. I think it is adequately